

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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CENTURY INDEMNITY COMPANY, ET  
AL.

Plaintiffs,

Versus

FREEPORT-MCMORAN COPPER &  
GOLD INC., ETC.

Defendant.

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ELECTRONICALLY FILED

CIVIL ACTION NO.: 08 CV 02012

PKL/DCF

AFFIDAVIT OF ALAN P. JACOBUS IN SUPPORT  
OF THE CONTINENTAL INSURANCE COMPANY'S  
MEMORANDUM OF LAW IN OPPOSITION TO FREEPORT-MCMORAN  
COPPER AND GOLD INC.'S MOTION TO DISMISS OR STAY THIS ACTION

I, Alan P. Jacobus, swear that the following is true, upon personal knowledge, under penalties of perjury.

1. I am a partner at the Carroll, Burdick & McDonough, LLP law firm in San Francisco, California.

2. I am a member in good standing of the bars of California, Illinois, and Louisiana.

3. I am admitted *pro hac vice* to represent plaintiff The Continental Insurance Company in this action.

4. Attached as **Exhibit 1** to this affidavit is a true and correct copy of the Complaint for Breach of Contract and Declaratory Relief, *Cyprus Amax Minerals Co v. Cont'l Cas. Co.*, No. BC391068 (Cal. Super. Ct., Los Angeles County May 16, 2008).

5. The Continental Insurance Company will move to dismiss or stay the action known as *Cyprus Amax Minerals Co. v. Cont'l Cas. Co.*, No. BC391068 (Cal. Super. Ct., Los Angeles County).

6 Attached as **Exhibit 2** to this affidavit is a true and correct copy of the Affidavit of Gregory D. Winfree.

7. Attached as **Exhibit 3** to this affidavit is a true and correct copy of the Email from Plumer to Jacobus (Apr. 4, 2008).

8. Attached as **Exhibit 4** to this affidavit is a true and correct copy of the Complaint, *Century Indem. Co. v. Freeport-McMoRan Copper & Gold Inc.*, 08 CV 0212 (PKL) (S.D.N.Y. Feb. 28, 2008).

9. Attached as **Exhibit 5** to this affidavit is a true and correct copy of the Letter from Peters to Dedeyan (Dec. 21, 2007).

10. Attached as **Exhibit 6** to this affidavit is a true and correct copy of the Letter from Bitter to Plumer (May 13, 2008).

11. Attached as **Exhibit 7** to this affidavit is a true and correct copy of the First Amended Complaint, *Century Indem. Co. v. Freeport-McMoRan Copper & Gold Inc.*, 08 CV 0212 (PKL) (S.D.N.Y. May 9, 2008).

12. Attached as **Exhibit 8** to this affidavit is a true and correct copy of the Letter from Galardi to Peters (Feb. 28, 2008).

13. Attached as **Exhibit 9** to this affidavit is a true and correct copy of the Stipulation Extending Time To Respond to Complaint, *Century Indem. Co. v. Freeport-McMoRan Copper & Gold Inc.*, 08 CV 0212 (PKL) (S.D.N.Y. Mar. 20, 2008).

14. Attached as **Exhibit 10** to this affidavit is a true and correct copy of the Email from Plumer to Heskin (Apr. 14, 2008).

15. Attached as **Exhibit 11** to this affidavit is a true and correct copy of the Email from Heskin to Plumer (Apr. 14, 2008).

16. Attached as **Exhibit 12** to this affidavit is a true and correct copy of the Email from Plumer to Heskin (Apr. 14, 2008).

17. Attached as **Exhibit 13** to this affidavit is a true and correct copy of the Letter from Plumer to The Hon. Peter K. Leisure (Apr. 16, 2008).

18. Attached as **Exhibit 14** to this affidavit is a true and correct copy of the Letter from Heskin to The Hon. Peter K. Leisure (Apr. 17, 2008).

19. Attached as **Exhibit 15** to this affidavit is a true and correct copy of the Letter from Plumer to The Hon. Peter K. Leisure (Apr. 18, 2008).

20. Attached as **Exhibit 16** to this affidavit is a true and correct copy of the Letter from Jacobus to The Hon. Peter K. Leisure (Apr. 21, 2008).

21. Attached as **Exhibit 17** to this affidavit is a true and correct copy of the Order, *Century Indem. Co. v. Freeport-McMoRan Copper & Gold Inc.*, No. 08 Civ. 02012 (PKL) (S.D.N.Y. Apr. 21, 2008).

//

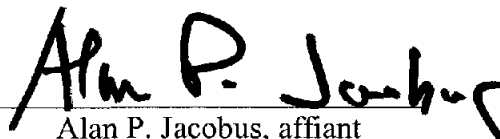
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22. Attached as **Exhibit 18** to this affidavit is a true and correct copy of excerpts from Form 10-K (Dec. 31, 2007), as available at <http://www.fcx.com/news/2008/FCX%202007%2010K.pdf>.

  
Alan P. Jacobus, affiant

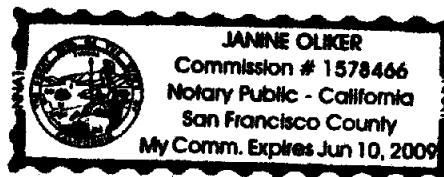
STATE OF CALIFORNIA )

) ss

COUNTY OF SAN FRANCISCO )

Subscribed and sworn to before me on this 12th day of June 2008, by Alan P. Jacobus, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

  
Notary Public



# EXHIBIT 1

**AFFIDAVIT OF ALAN P. JACOBUS IN SUPPORT OF THE CONTINENTAL INSURANCE COMPANY'S MEMORANDUM  
OF LAW IN OPPOSITION TO FREEPORT-McMoRAN COPPER AND GOLD INC.'S MOTION TO DISMISS OR STAY  
THIS ACTION**

***CENTURY INDEM. CO. V. FREEPORT-McMoRAN COPPER & GOLD INC.***

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK No.: 08 CV 02012 (PKL)**

**COPY**  
**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

MAY 16 2008

John A. Clarke, Executive Officer/Clerk  
By *D.M. Swain* Deputy  
D.M. SWAIN

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2 HELLER EHRMAN LLP  
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3 San Francisco, California 94104-2878  
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5 Attorney for Plaintiffs  
6 CYPRUS AMAX MINERALS COMPANY,  
7 PHELPS DODGE CORPORATION, and AMAX  
8 METALS RECOVERY INC.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11 CYPRUS AMAX MINERALS  
12 COMPANY, a Delaware corporation,  
13 PHELPS DODGE CORPORATION, a  
14 New York corporation, and AMAX  
15 METALS RECOVERY INC., a  
16 Delaware Corporation,

17 Plaintiffs,

18 v.

19 CONTINENTAL CASUALTY  
20 COMPANY, an Illinois Corporation,  
21 THE AMERICAN INSURANCE  
22 COMPANY, a Nebraska Corporation,  
23 OLD REPUBLIC INSURANCE  
24 COMPANY, a Pennsylvania  
25 Corporation, TRUCK INSURANCE  
26 EXCHANGE, a California corporation,  
27 THE CONTINENTAL INSURANCE  
28 COMPANY, a Pennsylvania  
Corporation, and CENTURY  
INDEMNITY COMPANY, AS  
SUCCESSOR TO INSURANCE  
COMPANY OF NORTH AMERICA, a  
Pennsylvania corporation,

Defendants.

Case No.:

BC391068 **BY FAX**

**COMPLAINT FOR BREACH OF  
CONTRACT AND DECLARATORY  
RELIEF**

**DEMAND FOR TRIAL BY JURY**

Plaintiffs Cyprus Amax Minerals Company ("Cyprus Amax"), Phelps Dodge Corporation ("Phelps Dodge"), and Amax Metals Recovery Inc. ("AMRI") (collectively, "Plaintiffs" or "Cyprus Amax") complain of defendants Continental Casualty Company ("Continental Casualty"), The American Insurance Company ("American"), Old Republic

Heller  
Ehrman LLP

COMPLAINT FOR DECLARATORY JUDGMENT AND BREACH OF CONTRACT; DEMAND FOR TRIAL BY JURY

1 Insurance Company ("Old Republic"), Truck Insurance Exchange ("Truck"), The  
 2 Continental Insurance Company ("Continental Insurance"), Century Indemnity Company  
 3 ("Century") (collectively, "Defendants") and allege as follows:

#### 4 NATURE OF THE ACTION

5 1. This civil action arises out of Defendants' refusal and failure to reimburse  
 6 Plaintiffs for certain defense costs and/or indemnity costs incurred in lawsuits alleging  
 7 bodily injury and resultant damages caused by exposure to talc, asbestos, and other  
 8 materials allegedly used on the premises, manufactured, sold, handled, trademarked,  
 9 installed, licensed or distributed by Cyprus Amax and certain of its predecessors  
 10 (collectively, the "Underlying Actions").

11 2. Defendants are insurers that sold primary insurance policies (the "Policies") to  
 12 Plaintiffs, all of which include a duty to defend and to indemnify. Defendants previously  
 13 have provided coverage to Plaintiffs for the costs of defense and indemnity for the  
 14 Underlying Actions and each of the Defendants currently are defending the Underlying  
 15 Actions and, as appropriate, providing indemnity.

16 3. This action seeks damages arising from all Defendants for breach of either  
 17 their contractual duties under their Policies or a 2007 Confidential Settlement and Defense  
 18 Cost Sharing Agreement between Cyprus Amax and certain Defendants (the "2007  
 19 Agreement") for certain disputed defense costs.

20 4. This action also seeks a declaration, pursuant to California Code of Civil  
 21 Procedure Section 1060, of the contractual rights, duties and responsibilities of certain of  
 22 the Defendants under their Policies as to the scope of their coverage for defense and  
 23 indemnity incurred in relation to certain of the Underlying Actions that these Defendants  
 24 recently have wrongfully asserted they have no obligation to pay in full.

#### 25 THE PARTIES

26 5. Plaintiff Cyprus Amax Minerals Company is a corporation organized and  
 27 existing under the laws of the State of Delaware with its principal place of business in  
 28

Heller  
 Ehrman LLP

1 Phoenix, Arizona. Prior to the 1993 merger that created Cyprus Amax Minerals Company,  
2 there were two separate companies: (a) AMAX Inc. and (b) Cyprus Minerals Company. In  
3 1999, Cyprus Amax merged with a subsidiary of Phelps Dodge, but kept the name Cyprus  
4 Amax Minerals Company.

5 6. Plaintiff Amax Metals Recovery Inc. is a corporation organized and existing  
6 under the laws of Delaware with its principal place of business in Braithwaite, Louisiana.  
7 AMRI is a subsidiary of Cyprus Amax.

8 7. Plaintiff Phelps Dodge Corporation is a corporation organized and existing  
9 under the laws of the State of New York with its principal place of business in Phoenix,  
10 Arizona. Phelps Dodge is the direct parent of Cyprus Amax and the indirect parent of  
11 AMRI.

12 8. Cyprus Amax is informed and believes, and thereon alleges, that defendant  
13 Continental Casualty is a corporation organized and existing under the laws of the State of  
14 Illinois with its principal place of business in Chicago, Illinois. Continental Casualty has  
15 consented to the jurisdiction and venue of this Court.

16 9. Cyprus Amax is informed and believes, and thereon alleges, that defendant  
17 American is a corporation organized and existing under the laws of the State of Nebraska  
18 with its principal place of business in Novato, California. American is authorized to do  
19 business, and does business, in the State of California. American has consented to the  
20 jurisdiction and venue of this Court.

21 10. Cyprus Amax is informed and believes, and thereon alleges, that defendant  
22 Old Republic is a corporation organized and existing under the laws of the State of  
23 Pennsylvania with its principal place of business in Greensburg, Pennsylvania. Old  
24 Republic is authorized to do business, and does business, in the State of California. Old  
25 Republic has consented to the jurisdiction and venue of this Court.

26 11. Cyprus Amax is informed and believes, and thereon alleges, that defendant  
27 Truck is a corporation organized and existing under the laws of the State of California with  
28



1 its principal place of business in Los Angeles, California. Truck is authorized to do  
2 business, and does business, in the State of California. Truck has consented to the  
3 jurisdiction and venue of this Court.

4 12. Cyprus Amax is informed and believes, and thereon alleges, that defendant  
5 Continental Insurance is a corporation organized and existing under the laws of the State of  
6 Pennsylvania with its principal place of business in Chicago, Illinois. Continental Insurance  
7 is authorized to do business, and does business, in the State of California.

8 13. Cyprus Amax is informed and believes, and thereon alleges, that defendant  
9 Century is a corporation organized and existing under the laws of the State of Pennsylvania  
10 with its principal place of business in Philadelphia, Pennsylvania. Century is authorized to  
11 do business, and does business, in the State of California. Century is the successor to CCI  
12 Insurance Company, as successor to Insurance Company of North America (collectively,  
13 "Century").

#### 14 VENUE

15 14. Venue is proper in this Court pursuant to the California Code of Civil Practice  
16 § 395 because at least one of the Defendants resides in Los Angeles County. In addition,  
17 Defendants Continental Casualty, American, Truck and Old Republic have consented to  
18 venue in this Court.

#### 19 THE INSURANCE POLICIES

20 15. Each of the Defendants issued liability insurance policies, as alleged below.

21 16. The Policies obligate each of the Defendants to defend and indemnify  
22 Plaintiffs in certain of the Underlying Actions.

23 17. The Policies are valid and binding contracts of insurance.

24 18. Plaintiffs have complied with all the terms and conditions precedent of the  
25 Policies, and are entitled to the benefit of insurance provided by them.  
26  
27

**The Continental Casualty Policies**

19. Continental Casualty sold, inter alia, the following liability insurance policies (collectively, the "Continental Casualty Policies") to Cyprus Minerals Company, as well as its predecessors and subsidiaries including Sierra Talc Company, United Sierra Corporation and Cyprus Industrial Minerals Company (collectively, "Cyprus"):

- a. Policy No. CL 4234386, effective October 15, 1964 to January 1, 1965;
- b. Policy No. CCP 240 505-10-90 R, effective November 1, 1969 to January 1, 1972
- c. Policy No. CCP 967-72-15 R, effective November 1, 1972 to November 1, 1974.

20. Cyprus Amax is the corporate successor to Cyprus and is entitled to coverage under the Continental Casualty Policies.

**The American Insurance Policies**

21. American sold the following liability insurance policies to Cyprus (collectively, the "American Policies"):

- a. Policy No. K2238871, effective May 23, 1961 to May 23, 1962;
- b. Policy No. K2257131, effective May 23, 1962 to May 23, 1963;
- c. Policy No. K2276210, effective May 23, 1963 to May 23, 1964;
- d. Policy No. K2290639, effective May 23, 1964 to October 15, 1964.

22. Cyprus Amax is the corporate successor to Cyprus and is entitled to coverage under the American Policies.

**The Old Republic Insurance Policies**

23. Old Republic sold the following liability insurance policies to Cyprus (collectively, the "Old Republic Policies"):

- a. Policy No. ZC-46316, effective July 1, 1985 to July 1, 1986;
- b. Policy No. ZC-46784, effective July 1, 1986 to July 1, 1987;
- c. Policy No. ZC-50105, effective July 1, 1988 to July 1, 1988.

24. Cyprus Amax is the corporate successors to Cyprus and entitled to coverage under the Old Republic Policies.

**The Truck Insurance Policies**

25. Truck sold the following liability insurance policies to Cyprus (collectively, the "Truck Policies"):

a. Policy No. 350-41-34, effective October 1, 1974 to July 1, 1980.

26. Cyprus Amax is the corporate successor to Cyprus and entitled to coverage under the Truck Policies.

**The Continental Insurance Policies**

27. Continental Insurance sold the following liability insurance policies to AMAX, Inc. and AMRI (collectively, the "Continental Insurance Policies"):

- a. Policy No. L 3 32 08 62, effective January 1, 1975 to January 1, 1976;
- b. Policy No. L 3 61 88 26, effective January 1, 1976 to January 1, 1977;
- c. Policy No. L 1 18 43 28, effective January 1, 1977 to January 1, 1980;
- d. Policy No. SRL 3 63 59 13, effective January 1, 1980 to January 1, 1981;
- e. Policy No. SRL 3 63 60 99, effective January 1, 1981 to January 1, 1982;
- f. Policy No. SRL 3 63 62 91, effective January 1, 1982 to January 1, 1983;
- g. Policy No. SRL 3 63 66 77, effective January 1, 1983 to January 1, 1984;
- h. Policy No. SRL 3 63 68 59, effective January 1, 1984 to January 1, 1985;
- i. Policy No. SRL 3 34 44 12, effective January 1, 1985 to January 1, 1986;
- j. Policy No. SRL 3 34 74 18, effective January 1, 1986 to April 1, 1986.

28. Amax Nickel Refining Company, Inc., was a named insured under the Continental Insurance policies sold to AMAX, Inc. AMRI is the corporate successor to Amax Nickel Refining Company, Inc. and is entitled to coverage under the Continental Insurance Policies.

**The Century Indemnity Policies**

29. Century sold the following liability policies to American Metal Climax, Inc. and/or to AMAX Inc. and AMRI (collectively, the "Century Policies"):

- a. Policy No. LB 39736, effective January 1, 1965 to January 1, 1968;
- b. Policy No. ALB 47618, effective January 1, 1968 to January 1, 1971;
- c. Policy No. ALB 47212, effective January 1, 1971 to January 1, 1972;
- d. Policy No. ALB 47240, effective January 1, 1972 to January 1, 1974;
- e. Policy No. ALB 47276, effective January 1, 1974 to January 1, 1975;
- f. Policy No. ALB 47279, effective January 30, 1974 to January 1, 1975.

30. Amax Nickel Refining Company, Inc., was insured under the Century policies as a subsidiary of American Metal Climax, Inc and/or AMAX, Inc. AMRI is the corporate successor to Amax Nickel Refining Company, Inc. and is entitled to coverage under the Century Policies.

#### THE 2007 AGREEMENT

31. Cyprus Amax, as successor to Cyprus, entered into the 2007 Agreement with Defendants Continental Casualty, American, Old Republic and Truck to settle a dispute over coverage for certain talc-related and other claims, including settlement of a lawsuit over coverage for such claims pending in the Los Angeles Superior Court.

32. The 2007 Agreement sets out the settling parties' respective duties and responsibilities toward one another, including the payment of defense costs, related to the claims covered by the Agreement, which claims include certain of the Underlying Actions described below.

33. The 2007 Agreement provides that any breach shall be enforced in an action in the Los Angeles Superior Court and shall be controlled and interpreted according to the laws of the State of California.

34. The 2007 Agreement is a valid and binding contract.

35. Cyprus Amax has complied with all the terms and conditions precedent of the 2007 Agreement and is entitled to the benefits provided by it.

#### THE UNDERLYING ACTIONS

36. The Underlying Actions seek damages from AMRI directly or Cyprus Amax (i) as successor to AMAX, Inc. ("AMAX"); and (ii) as successor to Cyprus Minerals

1 Company ("Cyprus") or its subsidiaries or predecessors. AMAX and Cyprus each  
 2 separately purchased insurance prior to their merger in 1993. Certain of the Underlying  
 3 Actions at issue exclusively arise out of claims for bodily injury asserted against AMAX  
 4 and/or AMRI related to AMRI's operations of a nickel refinery in Braithwaite, Louisiana  
 5 (the "AMAX Actions"). Certain of the Underlying Actions at issue arise out of claims for  
 6 bodily injury asserted against Cyprus and/or its subsidiaries or predecessors, including  
 7 Sierra Talc (the "Cyprus Actions").

8 **A. The Defense Costs Dispute (All Defendants)**

9 37. Pursuant to either the Policies and/or the 2007 Agreement, the Underlying  
 10 Actions obligate the Defendants to pay defense costs incurred by Cyprus Amax.

11 38. Defendants previously have acknowledged a duty and obligation under the  
 12 Policies and/or the 2007 Agreement to defend Cyprus Amax in the Underlying Actions.

13 39. Continental Casualty, American, Old Republic, and Truck have defended the  
 14 Cyprus Actions pending, inter alia, in California and Ohio against Plaintiff Cyprus Amax as  
 15 successor to Cyprus.

16 40. Century and Continental Insurance have defended the AMAX Actions  
 17 pending exclusively in Louisiana against Plaintiff AMRI and/or Cyprus Amax as successor  
 18 to AMAX, Inc.

19 41. Beginning in February 2007, Cyprus Amax commenced the review of  
 20 commingled AMAX and Cyprus documents potentially responsive to outstanding discovery  
 21 requests in both the Cyprus Actions and the AMAX Actions (the "Document Review").  
 22

23 42. The Document Review was undertaken by Cyprus Amax as part of its defense  
 24 of the Cyprus Actions and the AMAX Actions, specifically those actions where pending  
 25 discovery requests potentially required production of certain historic records.

26 43. On behalf of Cyprus Amax, Enviro-Tox Loss Services, Inc. ("ETLS")  
 27 provided notice and information regarding the Document Review to Defendants and to  
 28

1 National Coordinating Counsel for the Cyprus Actions and the AMAX Actions before or  
2 shortly after the Document Review commenced.

3 44. Upon receipt of invoices for the Document Review, all of the Defendants  
4 except Truck initially made payments of defense costs incurred by Cyprus Amax related to  
5 the Document Review.

6 45. The total costs of the Document Review is \$6.8 million.

7 46. According to the terms of the Policies and the 2007 Agreement, Defendants  
8 have a duty and obligation to reimburse Cyprus Amax for the costs of the Document  
9 Review as defense costs.

10 47. Each of the Defendants currently dispute their obligation to pay for the costs  
11 of the Document Review.

12 **B. The Allocation Dispute (AMAX Defendants Only)**

13 48. Pursuant to the Policies issued by Continental Insurance and Century (the  
14 "AMAX Defendants") to AMAX and AMRI, the AMAX Defendants are obligated to  
15 defend and to pay indemnity incurred by AMAX and AMRI in the AMAX Actions.

16 49. The AMAX Defendants previously have acknowledged a duty and obligation  
17 to pay defense and indemnity under the Policies for the AMAX Actions.

18 50. Beginning in May 2008, the AMAX Defendants have taken the position that  
19 the amounts they have paid and may be forced to pay in the future as defense and/or  
20 indemnity in the AMAX Actions are not wholly attributable to bodily injury occurring  
21 during the period of coverage provided by the Century and Continental Insurance Policies.

22 51. A present controversy exists with respect to the rights of AMAX and AMRI  
23 against the AMAX Defendants as to the parties rights, duties and obligations under the  
24 Policies related to the scope of defense and indemnity for the claims stated in the AMAX  
25 Actions.  
26  
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**FIRST CAUSE OF ACTION**

**(Breach of Contract Against All Defendants)**

52. Cyprus Amax repeats and incorporates by reference the allegations of Paragraphs 1 to 51 as though fully set forth herein.

53. Defendants sold written insurance contracts to Cyprus Amax.

54. Certain Defendants entered into the 2007 Agreement with Cyprus Amax.

55. Each of the Defendants have breached their contracts of insurance and/or the 2007 Agreement by refusing and failing to pay fully the defense costs associated with the Document Review.

56. As a direct result of the breach, Cyprus Amax has been deprived of the benefits of the insurance coverage and the 2007 Agreement. Cyprus Amax has been forced to pay substantial sums as defense costs arising from the Underlying Actions and Cyprus Amax has incurred damages as a result. Cyprus Amax is entitled to recover those damages plus interest.

**SECOND CAUSE OF ACTION**

**(Declaratory Judgment Against AMAX Defendants)**

57. Cyprus Amax repeats and incorporates by reference the allegations of Paragraphs 1 to 55 as though fully set forth herein.

58. The AMAX Defendants have a duty under the terms of their respective insurance policies to defend and to pay indemnity incurred in connection with the AMAX Actions.

59. Century and Continental Insurance dispute their obligations to pay in full defense and indemnity owed by Cyprus Amax and AMRI as a result of the AMAX Actions.

60. Cyprus Amax seeks a declaration of rights concerning the scope of coverage owed by Century and Continental Insurance in respect to the Policies issued to AMAX and AMRI related to the AMAX Actions.

61. By reason of the foregoing, an actual and justiciable controversy exists

1 between Cyprus Amax and the AMAX Defendants concerning the contractual rights, duties  
 2 and obligations of the parties relating to the scope of coverage for defense and indemnity  
 3 for the AMAX Actions.

4 62. A judicial declaration is necessary and appropriate, under California Code of  
 5 Civil Procedure section 1060, so that Cyprus Amax may ascertain its rights in light of its  
 6 existing and imminent obligations to pay sums for defense and indemnity in the AMAX  
 7 Actions. The issuance of declaratory relief by this Court will terminate some or all of the  
 8 existing controversy between the parties.

9 WHEREFORE, Cyprus Amax prays for relief as set forth below.

10 **PRAYER FOR RELIEF**

11 Plaintiffs requests that the Court enter judgment as follows:

12 1. With respect to the First Cause of Action, judgment against Defendants and  
 13 an award of damages according to proof at trial, plus interest thereon at the maximum legal  
 14 rate;

15 2. With respect to the Second Cause of Action, for a declaration that:

16 a. Each of the AMAX Defendants, pursuant to all the terms of its  
 17 respective policies, is jointly and severally liable for all sums that Cyprus Amax becomes  
 18 obligated to pay, through judgment, settlement, or otherwise, with respect to:

19 (i) Each asbestos-related personal injury claim in which any part of the  
 20 claimant's injury is alleged or shown to have occurred during the  
 21 policy period of that policy; and

22 (ii) Each asbestos-related personal injury claim in which no specific  
 23 period of injury has been alleged or established before the termination  
 24 of the claim.

25 Such obligation of each defendant to make full payment on behalf of Cyprus Amax is  
 26 subject only to underlying and upper limits of liability and percentage participation limits, if  
 27 any, expressly and unambiguously stated in its respective Policies.

28 (b) Each of the AMAX Defendants, pursuant to all the terms of its



1 respective Policies, is jointly and severally obligated to defend Cyprus Amax unless the  
 2 allegations of the claimant clearly preclude the possibility that any part of the claimant's  
 3 injury could have occurred during any one of that defendant's policy periods. Such  
 4 obligation under each of the Policies to defend in full is subject only to underlying and  
 5 upper limits of liability or percentage participation limits, if any, that expressly and  
 6 unambiguously apply to the duty to defend, or to policy provisions that otherwise expressly  
 7 and unambiguously limit the duty to defend.

8 (c) For purposes of insurance policy coverage, a claimant's asbestos-  
 9 related personal injury is deemed to begin on the date of the claimant's first exposure to  
 10 asbestos and to continue to occur until the date of the claimant's death.

11 3. With respect to all Claims for Relief:

- 12 a. For Plaintiff's attorneys' fees and costs of suit incurred herein; and  
 13 b. For such other, further, and/or different relief as the Court may deem  
 14 just and proper.

15 DATED: May 16, 2008

HELLER EHRMAN LLP

By

Lawrence A. Hobel

Attorneys for Plaintiffs

CYPRUS AMAX MINERALS COMPANY,  
 PHELPS DODGE CORPORATION, and  
 AMAX METALS RECOVERY INC.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands a jury trial for those claims that may be tried by a jury  
 23 under the law.

24  
 25  
 26  
 27  
 28  
 Heller  
 Ehrman LLP

1 DATED: May 16, 2008

HELLER EHRMAN LLP

2  
3 By

Lawrence A. Hobel

Attorneys for Plaintiffs

4 CYPRUS AMAX MINERALS COMPANY,

5 PHELPS DODGE CORPORATION, and

6 AMAX METALS RECOVERY INC.

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Heller  
Ehrman LLP

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# EXHIBIT 2

**AFFIDAVIT OF ALAN P. JACOBUS IN SUPPORT OF THE CONTINENTAL INSURANCE COMPANY'S MEMORANDUM  
OF LAW IN OPPOSITION TO FREEPORT-McMoRAN COPPER AND GOLD INC.'S MOTION TO DISMISS OR STAY  
THIS ACTION**

***CENTURY INDEM. CO. V. FREEPORT-McMoRAN COPPER & GOLD INC.***

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK No.: 08 CV 02012 (PKL)**

Carroll, Burdick & McDonough

MAY 27 2008

RECEIVED

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
CENTURY INDEMNITY COMPANY, AS  
SUCCESSOR TO CCI INSURANCE  
COMPANY, AS SUCCESSOR TO  
INSURANCE COMPANY OF NORTH  
AMERICA and THE CONTINENTAL  
INSURANCE COMPANY,

Plaintiffs,

v.

FREEPORT-MCMORAN COPPER & GOLD  
INC., AS THE CLAIMED SUCCESSOR TO  
PHELPS DODGE CORPORATION, AS THE  
CLAIMED SUCCESSOR TO CYPRUS  
AMAX MINERALS COMPANY, AS THE  
CLAIMED SUCCESSOR TO AMAX, INC.,  
AS SUCCESSOR TO AMERICAN METAL  
CLIMAX, INC.,

Defendant.  
-----X

Index No. 08 Civ. 02012 (PKL)

**AFFIDAVIT OF  
GREGORY D. WINFREE**

State of Arizona       )  
                                  ) ss:  
County of Maricopa    )

GREGORY D. WINFREE, being duly sworn, deposes and states as follows:

1. I submit this Affidavit in support of the motion to dismiss by Freeport-McMoRan Copper & Gold Inc. ("Freeport"). Unless stated upon information and belief, I have personal knowledge of the facts stated herein and affirm that such statements of fact are true and correct to the best of my knowledge.

2. I am Chief Litigation Counsel with Freeport-McMoRan Copper & Gold Inc. ("Freeport"). In my capacity as Chief Litigation Counsel, I am responsible for managing all of the active litigation involving Freeport and its subsidiaries, affiliates, and business units. I have held this position since March 2007 at an office located in Phoenix, Arizona. Previously, I was employed by Phelps Dodge Corporation ("Phelps Dodge") as Senior Counsel-Litigation, a position I held from June 2004.

3. Beginning in February 2007, Cyprus Amax Minerals Company ("Cyprus Amax") commenced a review of 18,000 boxes of commingled AMAX Inc. ("AMAX") and Cyprus Minerals Company ("Cyprus") documents.

4. The review of the above-referenced documents was necessary in my judgment to comply with outstanding discovery requests in certain lawsuits seeking damages for bodily injury related to Amax Metals Recovery, Inc.'s ("AMRI") historic operations. These lawsuits were filed in Louisiana against AMRI (the "AMRI Actions").

5. The review of the above-referenced documents also was necessary to comply with certain outstanding discovery requests in certain lawsuits seeking damages for bodily injury related to Cyprus Minerals Company predecessors.

6. The document review took place in Phoenix, Arizona, and the law firm that conducted the review is based in Phoenix, Arizona.

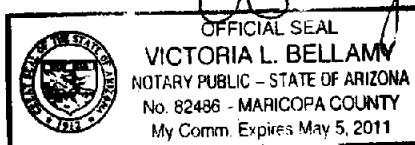
7. Insurance coverage for the Cyprus component of the document review is governed by a confidential settlement agreement (the "2007 Agreement" or "Agreement") entered into by Cyprus Amax and four primary insurers providing coverage for the historic operations of Cyprus. I have reviewed the 2007 Agreement. The existence of the 2007 Agreement is not confidential, although the Agreement generally is confidential. Consistent with the 2007 Agreement, any dispute must be adjudicated in the Superior Court of California, County of Los Angeles, and will be controlled by and interpreted according to the laws of the State of California.

8. HellerEhrman LLP, outside insurance counsel for Cyprus Amax, apprised the parties to the 2007 Agreement in advance -- pursuant to the Agreement's terms -- that Cyprus Amax intended to disclose the general nature of the Agreement and its application to the current dispute and the substance of those specific terms related to choice of forum and choice of law requirements.

9. I participated in the pre-litigation claim discussions with Continental and Century. Freeport and its subsidiaries negotiated in good faith with Continental and Century, including attending face-to-face meetings, providing requested information and allowing them to visit the site of the document review, which was ongoing at the time. I relied upon the impression they conveyed that they were evaluating the claim for purposes of engaging in a serious claims discussion. There was no prior warning that they intended to file a lawsuit and we were completely blindsided by the filing of this lawsuit.

Sworn to before me this 22nd  
day of May, 2008

Victoria L. Bellamy  
Notary Public



Gregory D. Winfree  
Gregory D. Winfree

# EXHIBIT 3

**AFFIDAVIT OF ALAN P. JACOBUS IN SUPPORT OF THE CONTINENTAL INSURANCE COMPANY'S MEMORANDUM  
OF LAW IN OPPOSITION TO FREEPORT-McMoRAN COPPER AND GOLD INC.'S MOTION TO DISMISS OR STAY  
THIS ACTION**

***CENTURY INDEM. CO. V. FREEPORT-McMoRAN COPPER & GOLD INC.***

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK No.: 08 CV 02012 (PKL)**

**Jacobus, Alan**

---

**From:** Plumer, Mark J. [Mark.Plumer@hellerehrman.com]  
**Sent:** Friday, April 04, 2008 6:28 AM  
**To:** Jacobus, Alan; Heskins@whiteandwilliams.com  
**Cc:** Cirando, Lisa M.  
**Subject:** Century Indemnity Co., et al. v. Freeport-McMoRan Copper & Gold Inc., No. 08-CV-0212 (PKL) (SDNY)

**Attachments:** 791570\_1.DOC



791570\_1.DOC (34 KB)

Alan and Shane,

We appreciate Century and Continental's ("plaintiffs") willingness to consider stipulating to the dismissal of Freeport-McMoRan Copper & Gold Inc. without prejudice from the lawsuit in an effort to avoid unnecessary motion practice. This email responds to your request that we explain the reason for the dismissal and that we provide adequate assurances that a complete resolution of this dispute <<791570\_1.DOC>> may be had as against the remaining parties alone.

Plaintiffs' claim is based solely on policies issued Amax Inc. or its predecessors and historic records generated by Amax, Inc. and/or Cyprus Minerals Company or its predecessors. It is undisputed that Amax, Inc. merged into Cyprus Minerals Company and immediately changed its name to Cyprus Amax Minerals Company. It is also undisputed that Cyprus Amax Minerals Company thereafter merged with a subsidiary of Phelps Dodge, but kept the name Cyprus Amax Minerals Company. Thus, Cyprus Amax Minerals Company, a currently existing corporation, is the corporate successor to the Amax, Inc and predecessor coverage and is therefore entitled to any coverage available under the Amax policies. Moreover, any documents implicated by plaintiffs' claims arise out of the operations of Cyprus Amax Minerals Company or its corporate predecessors. No other members of the Freeport McMoRan corporate family are necessary for plaintiffs to obtain complete relief regarding the declaratory judgment sought in this action regarding the Amax policies. This said, we do not propose to dismiss Phelps Dodge Corporation, whom we have determined played an active role in the facts and circumstances underlying plaintiffs' Complaint as Cyprus Amax Minerals Company's immediate parent. Freeport McMoRan Copper & Gold Inc., as the ultimate parent of Cyprus Amax Minerals Company and Phelps Dodge Corporation is too far removed from the facts, is unnecessary and therefore should be dismissed from the case.

In return for the plaintiffs' agreement to dismiss Freeport-McMoRan Copper & Gold Inc. without prejudice, Freeport-McMoRan Copper & Gold Inc will agree to provide any discovery relevant to the litigation. A dismissal without prejudice also will not bar Plaintiffs from seeking to re-name Freeport-McMoRan Copper & Gold Inc. should the need arise.

Please confirm by reply email that you will stipulate to the Rule 41(a)(1)(A)(ii) dismissal of Freeport-McMoRan without prejudice and the attached draft stipulation is acceptable. Thank you.

Mark J. Plumer | Attorney | HellerEhrmanLLP | 1717 Rhode Island Avenue, NW | Washington, DC 20036

tel: +1.202.912.2021 | fax: +1.202.912.2202 | email: mark.plumer@hellerehrman.com | web: www.hellerehrman.com



# EXHIBIT 4

**AFFIDAVIT OF ALAN P. JACOBUS IN SUPPORT OF THE CONTINENTAL INSURANCE COMPANY'S MEMORANDUM  
OF LAW IN OPPOSITION TO FREEPORT-McMoRAN COPPER AND GOLD INC.'S MOTION TO DISMISS OR STAY  
THIS ACTION**

***CENTURY INDEM. CO. V. FREEPORT-McMoRAN COPPER & GOLD INC.***

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK No.: 08 CV 02012 (PKL)**

JUDGE LEISURE

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

08 CV 02012

Rec'd  
3/4/08  
JNC II

CENTURY INDEMNITY COMPANY, AS  
SUCCESSOR TO CCI INSURANCE  
COMPANY, AS SUCCESSOR TO  
INSURANCE COMPANY OF NORTH  
AMERICA and THE CONTINENTAL  
INSURANCE COMPANY

JURY TRIAL DEMANDED

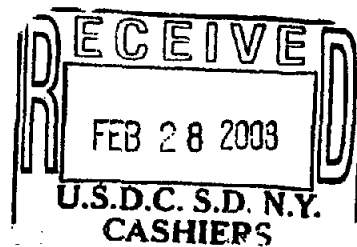
Plaintiffs,

COMPLAINT

versus

CIVIL ACTION NO. \_\_\_\_\_

FREEPORT-MCMORAN COPPER &  
GOLD INC., AS THE CLAIMED  
SUCCESSOR TO PHELPS DODGE  
CORPORATION, AS THE CLAIMED  
SUCCESSOR TO CYPRUS AMAX  
MINERALS COMPANY, AS THE  
CLAIMED SUCCESSOR TO AMAX,  
INC., AS SUCCESSOR TO AMERICAN  
METAL CLIMAX, INC.



Defendant.

COMPLAINT

Plaintiffs Century Indemnity Company (as successor to CCI Insurance Company, as successor to Insurance Company of North America) ("Century") and The Continental Insurance Company ("Continental") invoke the jurisdiction of this court pursuant to 28 U.S.C.A. § 1332 (diversity of citizenship) and plead as their complaint against defendant Freeport-McMoRan Copper and Gold Inc., as the claimed successor to Phelps Dodge Corporation, as the claimed successor to Cyprus Amax Minerals Company, as the claimed successor to Amax, Inc., as successor to American Metal Climax, Inc. ("Freeport McMoRan") as follows:

### INTRODUCTION

1. In this insurance coverage action, Century and Continental seek a declaratory judgment that the liability insurance policies Century and Continental issued to Amax, Inc. and/or American Metal Climax, Inc. (collectively, "Amax") provide no insurance coverage for the costs Freeport-McMoRan claims it has incurred and continues to incur in its effort to assimilate the corporate records of Amax into Freeport-McMoRan's own corporate records (the "Corporate Records Assimilation Project").

### THE PARTIES

2. Plaintiff Century is a corporation that is incorporated in the Commonwealth of Pennsylvania and whose principal place of business is in Philadelphia, Pennsylvania. Century, for purposes of 28 U.S.C.A. § 1332 (c), is a citizen of Pennsylvania.

3. Plaintiff Continental is a corporation that is incorporated in the Commonwealth of Pennsylvania and whose principal place of business is in Chicago, Illinois. Continental, for purposes of 28 U.S.C.A. § 1332 (c), is a citizen of Pennsylvania and Illinois.

4. Defendant Freeport-McMoRan is a corporation that is incorporated in the State of Delaware and whose principal place of business is in New Orleans, Louisiana. Freeport-McMoRan, for purposes of 28 U.S.C.A. § 1332 (c), is a citizen of Delaware and Louisiana.

### AMOUNT IN CONTROVERSY

5. Freeport McMoRan claims it has incurred \$3,900,000 through December 2007 and that it will incur a total of \$7,800,000 by year-end 2008 for the Corporate Records Assimilation Project. The parties dispute whether (a) Freeport McMoRan is entitled to coverage under the policies that Century and Continental issued to Amax, and (b) even if Freeport

McMoRan is entitled to coverage, whether Century and Continental are responsible for these costs.

#### **JURISDICTION**

6. Jurisdiction is proper in this court under 28 U.S.C.A. § 1332 (diversity of citizenship) because this is a civil action between citizens of different states where the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

#### **VENUE**

7. Venue is proper in this court under 28 U.S.C.A. § 1391 (a) and 28 U.S.C.A. § 1391 (c) because Freeport-McMoRan is a defendant corporation that resides in this judicial district because it is subject to personal jurisdiction in this district at the date of commencement of this action.

8. Venue is further proper in this court under 28 U.S.C.A. § 1391 (a) and 28 U.S.C.A. § 1391 (c) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

#### **STATEMENT OF CENTURY'S AND CONTINENTAL'S CLAIM**

9. On January 1, 1958, Climax Molybdenum Company merged with American Metals Company to form American Metal Climax, Inc.

10. On or after January 1, 1975, American Metal Climax, Inc. became Amax, Inc.

11. On or around November 15, 1993, Amax, Inc. merged with Cyprus Minerals Company to form Cyprus Amax Minerals Company.

12. On December 2, 1999, Phelps Dodge Corporation acquired Cyprus Amax Minerals Company.

13. On March 19, 2007, Freeport-McMoRan acquired Phelps Dodge Corporation.

14. Century issued the following liability insurance policies to Amax:

- (a) Policy No. LB 39736 for the January 1, 1965 to January 1, 1968 policy period;
- (b) Policy No. ALB 47168 for the January 1, 1968 to January 1, 1971 policy period;
- (c) Policy No. ALB 47212 for the January 1, 1971 to January 1, 1972 policy period;
- (d) Policy No. ALB 47240 for the January 1, 1972 to January 1, 1974 policy period;
- (e) Policy No. ALB 47276 for the January 1, 1974 to January 1, 1975 policy period; and
- (f) Policy No. ALB 47279 for the January 30, 1974 to January 1, 1975 policy period.

15. Continental issued the following primary, occurrence-based, liability insurance policies to Amax:

- (a) Policy No. L-3 32 08 62 for the January 1, 1975 to January 1, 1976 policy period;
- (b) Policy No. L-3 61 88 26 for the January 1, 1976 to January 1, 1977 policy period;
- (c) Policy No. L 1 18 43 28 for the January 1, 1977 to January 1, 1980 policy period;
- (d) Policy No. SRL-3 63 59 13 for the January 1, 1980 to January 1, 1981 policy period;

- (e) Policy No. SRL 3 63 60 99 for the January 1, 1981 to January 1, 1982 policy period;
- (f) Policy No. SRL 3 63 62 91 for the January 1, 1982 to January 1, 1983 policy period;
- (g) Policy No. SRL 3 63 66 77 for the January 1, 1983 to January 1, 1984 policy period;
- (h) Policy No. SRL 3 63 68 59 for the January 1, 1984 to January 1, 1985 policy period;
- (i) Policy No. SRL 3 34 44 12 for the January 1, 1985 to January 1, 1986 policy period;
- (j) Policy No. SRL 3 34 74 18 for the January 1, 1986 to April 1, 1986 policy period.

16. Beginning in April 2005, Phelps Dodge Corporation began to ship corporate documents from its locations around the country to Phoenix, Arizona to review the documents and to assimilate those records into its general corporate records.

17. Beginning in February 2007, Phelps Dodge Corporation undertook the review and corporate assimilation of the documents it obtained from Cyprus Amax Minerals Company when Phelps Dodge Corporation acquired Cyprus Amax Minerals Company in 1999.

18. Phelps Dodge Corporation neither sought nor obtained the consent of Century or Continental before it began the review and corporate assimilation of the Cyprus Amax Minerals Company records.

19. Since March 2007, Freeport-McMoRan has continued the review and corporate assimilation of the Cyprus Amax Minerals Company records.

20. Freeport-McMoRan neither sought nor obtained the consent of Century or Continental before it continued the review and corporate assimilation of the Cyprus Amax Minerals Company records.

21. Through December 2007, Freeport-McMoRan claims the review and corporate assimilation of the Cyprus Amax Minerals Company records cost \$3,900,000.

22. Through the project's completion, Freeport-McMoRan claims the review and corporate assimilation of the Cyprus Amax Minerals Company records will cost an additional \$3,900,000, for a total of \$7,800,000.

23. Freeport-McMoRan claims the insurance policies Century and Continental issued to Amax cover the cost of the assimilation of the Cyprus Amax Minerals Company corporate records into Freeport-McMoRan's corporate records.

24. Century and Continental deny any obligation for the cost of the Corporate Records Assimilation Project.

25. An actual controversy exists between Century and Continental, on the one hand, and Freeport-McMoRan, on the other hand, over whether the insurance policies cover the cost of the Corporate Records Assimilation Project.

#### COUNT I

26. Century and Continental seek a declaratory judgment under 28 U.S.C.A. § 2201 that the insurance policies issued to Amax do not provide coverage for the cost of the Corporate Records Assimilation Project on the following grounds:

- (a) The costs incurred are not defense costs within the meaning of the policies;

- (b) Century and Continental are not responsible for costs Freeport-McMoRan voluntarily incurs;
- (c) Century and Continental are not responsible for costs Freeport-McMoRan incurred without Century's and Continental's consent;
- (d) Century and Continental are not responsible for unreasonable and/or unnecessary costs;
- (e) Freeport-McMoRan is neither the named insured nor a successor entitled to coverage under the liability insurance policies that Century and Continental issued to Amax; and
- (f) Any other grounds stemming from the policies, the law, or otherwise.

**DEMAND FOR JUDGMENT**

Wherefore, Century and Continental demand judgment, as follows:

1. A declaratory judgment that Century and Continental have no obligation to pay for Freeport-McMoRan's Corporate Records Assimilation Project;
2. Alternatively, should the court determine that Century and Continental have an obligation to pay any portion of the Corporate Records Assimilation Project, a declaratory judgment over the respective rights and obligations of the parties under the Century and Continental policies, and declaratory judgment for the amount of any obligation of Century and/or Continental to pay for the Corporate Records Assimilation Project;
3. Costs;
4. All other relief to which Century and Continental are entitled.



Dated: February 28, 2008.

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